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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/668,617

09/23/2003

Alicia Marie Russell

1033-SS00402

1505

34456

7590

11/18/2009

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EXAMINER

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ART UNIT

PAPER NUMBER

2617

MAIL DATE

DELIVERY MODE

11/18/2009

PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ALICIA MARIE RUSSELL

Appeal 2009-002583
Application 10/668,617
Technology Center 2600

Decided: November 18, 2009

Before KENNETH W. HAIRSTON, JOSEPH F. RUGGIERO,
and ROBERT E. NAPPI, *Administrative Patent Judges*.

HAIRSTON, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant seeks our review under 35 U.S.C. § 134(a) of the Examiner's final rejection of claims 1, 3, 4, 7 to 13, 15, 18 to 27, and 32 to 45.¹ We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

Appellant's invention relates to a method and system for forwarding wireless communications that includes a transmitter or wireless beacon, and a wireless communication interface (Figs. 1, 2; Abstract; Spec. ¶¶ [0001], [0006], [0007]; claims 1, 3, 13, 27, 32, 36). The wireless communication interface can transmit a unique identification to a wireless mobile device in the wireless beacon's coverage area, and when the wireless mobile device receives the unique identification it can forward calls to an alternate network address corresponding to the unique identification (Fig. 6; Abstract; Spec. ¶¶ [0018], [0019], [0021], [0022]; claim 36). The wireless communication interface may also include a look up table (LUT) (Fig. 2; Spec. ¶ [0028]; claims 1, 3, 13).

Claim 36 is representative of the claimed invention, and reads as follows:

36. A wireless beacon comprising:

a transmitter configured to provide a wireless beacon coverage area;
and

a wireless communication interface configured to wirelessly transmit a unique identification of the wireless beacon to a wireless mobile device located within the wireless beacon coverage area, wherein, when the unique identification is an expected value, the wireless mobile device selects an alternate network destination address corresponding to the unique identification and forwards external communications to the alternate

¹ Claims 2, 5, 6, 14, 16, 17, and 28 to 31 have been canceled.

network destination address while the wireless mobile device is within the wireless beacon coverage area.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Waldman	US 4,768,224	Aug. 30, 1988
Bartle	US 6,188,888 B1	Feb. 13, 2001
Holloway	US 2003/0092451 A1	May 15, 2003
Chow	US 6,574,470 B1	Jun. 3, 2003
Mori	US 6,609,006 B1	Aug. 19, 2003
Bosik	US 6,856,806 B1	Feb. 15, 2005

(filed Dec. 20, 2001)

(i) The Examiner rejected claim 36 under 35 U.S.C. § 102(b) based upon the teachings of Holloway.²

(ii) The Examiner rejected claims 1, 3, 4, 7, 9 to 13, 15, 20 to 25, 39, and 45 under 35 U.S.C. § 103(a) based upon the teachings of Holloway and Bartle.

(iii) The Examiner rejected claims 8, 16, 18, 19, and 38 under 35 U.S.C. § 103(a) based upon the teachings of Holloway and Bartle, further in view of well-known prior art.

(iv) The Examiner rejected claim 26 under 35 U.S.C. § 103(a) based upon the teachings of Holloway, Bartle, and Bosik.

² Although the Examiner rejected claim 36 under 35 U.S.C. § 102(b), we note that Holloway has a publication date of May 15, 2003, which is less than one year before the September 23, 2003 filing date of the instant application on appeal. Relying on the May 15, 2003 publication date of Holloway, the proper basis for rejection is under 35 U.S.C. §§ 102(a) or (e). As neither the Examiner nor Appellant has addressed this issue, we consider it harmless error for purposes of this appeal.

(v) The Examiner rejected claim 27 under 35 U.S.C. § 103(a) based upon the teachings of Holloway, Bartle, and Mori.

(vi) The Examiner rejected claims 32 to 35 and 43 under 35 U.S.C. § 103(a) based upon the teachings of Holloway, Bartle, and Waldman.

(vii) The Examiner rejected claim 40 under 35 U.S.C. § 103(a) based upon the teachings of Holloway, Bartle, and Waldman, further in view of well-known prior art.

(viii) The Examiner rejected claim 37 under 35 U.S.C. § 103(a) based upon the teachings of Holloway and Chow.

(ix) The Examiner rejected claims 41 and 42 under 35 U.S.C. § 103(a) based upon the teachings of Holloway, Bartle, Waldman, and Appellant's Admitted Prior Art (APA) (Spec. ¶ [0024]).³

(x) The Examiner rejected claim 44 under 35 U.S.C. § 103(a) based upon the teachings of Holloway and Appellant's Admitted Prior Art (APA) (Spec. ¶ [0024]).⁴

With regard to the anticipation rejection of claim 36 and the obviousness rejections of claims 1, 3, 4, 7 to 13, 15, 18 to 27, 32 to 35, 37 to 45, the Examiner relies on Holloway (*see* Figs. 1A, 1B, 2-5; ¶¶ [0014]-

³ The Examiner mistakenly refers to paragraph [0026] of Appellant's Specification in making the rejection based on APA, when it is actually paragraph [0024] of APA that contains the relied upon description (*see* FF 3, *infra*). As neither Appellant nor the Examiner has noted this discrepancy, we consider this to be a harmless error.

⁴ This rejection also relies incorrectly on paragraph [0026] of APA as discussed *supra*, footnote 3. In addition, the heading of this rejection states that the rejection applies to claims 41 and 42, however, claim 44 is discussed in the body of the rejection spanning pages 22 to 23 of the Answer. Accordingly, we will treat this as a harmless error, and apply the rejection to claim 44.

[0022]) as teaching the recited limitation of (i) selecting an alternate network destination address corresponding to a unique identification, and (ii) forwarding external communications to the alternate network destination address when (a) a wireless mobile device is within a wireless beacon coverage area, and (b) the unique identification is an expected value, as set forth in claims 1, 3, 13, and 36 (Ans. 3-23). With regard to the obviousness rejections of claims 1, 3, 4, 7 to 13, 15, 18 to 27, 32 to 35, 37 to 45, the Examiner relies on Bartle (col. 7, ll. 50-61) as teaching the recited limitation of a table or look up table (LUT) of recognized unique identifiers which is accessible to a wireless device, as set forth in claims 1, 3, 13, 27, and 32 (Ans. 6-7, 9, 11, 12). With regard to the obviousness rejection of claim 44, the Examiner relies upon APA as teaching the recited limitation of a unique and user selected identification (Ans. 22-23).

ISSUES *Anticipation*

Appellant argues (App. Br. 6-8; Reply Br. 2-3) that Holloway fails to disclose or suggest the limitation recited in claim 36 of (i) selecting an alternate network destination address corresponding to a unique identification, and (ii) forwarding external communications to the alternate network destination address when (a) a wireless mobile device is within a wireless beacon coverage area, and (b) the unique identification is an expected value. Appellant contends (App. Br. 8) that Holloway's disclosure (§ [0021]) of selecting to override the transfer of calls with a button is not the same as selecting an alternate network destination address when a unique identification is an expected value.

Obviousness

Appellant argues, *inter alia*, (App. Br. 8-22; Reply Br. 3-9) that the applied combination of the teachings of Holloway and Bartle fails to disclose or suggest at least one feature of claims 1, 3, 13, 27, and 32 for the reasons discussed with respect to the anticipation rejection *supra*, and because Holloway and Bartle teach away from their combination. Specifically, Appellant argues (App. Br. 12-14; Reply Br. 3-4) that Holloway teaches away from using a docking station for call forwarding phones, while Bartle discloses using a docking station and teaches away from using specialized hardware such as wireless beacons for call forwarding. Therefore, Appellant contends that the combination of Holloway and Bartle is improper and cannot establish a *prima facie* case of obviousness under § 103(a).

Appellant also argues (App. Br. 22; Reply Br. 9) that APA fails to disclose or suggest the recited limitation of dependent claim 44 because running an automated activation procedure to provision a beacon identifier and public key to a phone is not a unique and user selected identification, as recited in claim 44.

Based on Appellant's arguments with respect to the anticipation and obviousness rejections, the following issues are presented:

- (i) Has Appellant shown that the Examiner erred in determining that Holloway discloses or suggests (i) selecting an alternate network destination address corresponding to a unique identification, and (ii) forwarding external communications

- to the alternate network destination address when (a) a wireless mobile device is within a wireless beacon coverage area, and (b) the unique identification is an expected value?
- (ii) Has Appellant shown that the Examiner erred in determining that Holloway and Bartle are properly combinable?
- (iii) Has Appellant shown that the Examiner erred in determining that APA (Spec. ¶ [0024]) discloses or suggests a unique and user selected identification, as recited in claim 44?

FINDINGS OF FACT (FF)

1. As indicated *supra*, Appellant describes and claims a method (Figs. 5, 6) and system (Figs. 1, 2) for forwarding wireless communications that includes a transmitter or wireless beacon 121/225, and a wireless communication interface 210 (Figs. 1, 2; Abstract; Spec. ¶¶ [0001], [0006], [0007]; claims 1, 3, 13, 27, 32, 36). The wireless communication interface 210 can transmit a unique identification to a wireless mobile device 123 in the wireless beacon's coverage area 110, and when the wireless mobile device 123 receives the unique identification it can forward calls to an alternate network address 131 corresponding to the unique identification (Figs. 5, 6; Abstract; Spec. ¶¶ [0018], [0019], [0021], [0022]; claim 36).
2. Appellant discloses that the wireless communication interface 210 may also include a look up table (LUT) (not shown) (Fig. 2; Spec. ¶ [0028]; claims 1, 3, 13, 27, 32). The LUT may be located in a call forwarding module 221 which is part of wireless communications

- interface 210 which in turn may be located inside the wireless communication device 123 (Spec. ¶¶ [0026]-[0028]).
3. Appellant discloses at paragraph [0024] of the Specification that only authorized wireless devices 123 may initiate call forwarding to a number designated by the wireless beacon 121/225. “[T]he beacon signal may be encrypted so that only mobile devices with the correct public key can decrypt the signal and read the beacon identifier. Various methods exist for provisioning the beacon identifier and public key within the mobile device” (Spec. ¶ [0024], cited by the Examiner as APA). This could be done by “run[ning] a short activation procedure between the beacon and the mobile phone” (Spec. ¶ [0024]).
4. Holloway describes (i) selecting a call forwarding destination 130/240 (i.e., network address) corresponding to a call forwarding number (i.e., selecting an alternate network destination address corresponding to a unique identification) (“[w]hen the transmitter 220 is installed, it is programmed with the [call forwarding] phone number” (¶ [0017])), and (ii) forwarding external communications to the alternate network destination address 130/240 when (a) a wireless mobile device 110/230 is within a wireless beacon coverage area 120 (*see* Figs. 1B, 3, 6), and (b) the unique identification is an expected value (*see* Figs. 1A, 1B, 2-5; ¶¶ [0014]-[0022]). Holloway’s method and system can “recognize different mobile phones associated with [the beacon/transmitter]” and can “transfer each mobile phone to a different extension [e.g., a different call forwarding number]” (¶ [0022]).

5. Holloway describes a transmitter or wireless beacon 220 for providing a wireless coverage area 120 (*see* Abstract; Fig. 1B; ¶¶ [0014]-[0017]).
6. Holloway describes two possible options for call forwarding systems for wireless communications devices, (i) using a wireless beacon 220 (¶¶ [0002], [0004], [0006]; Fig. 2), and (ii) using a docking station (e.g., in a vehicle) (¶ [0005]).
7. Bartle describes a call forwarding memory 26 or look up table (LUT) of call forwarding numbers (i.e., recognized unique identifiers) which is accessible to a cellular telephone 102/103 via CPU 23/298 for forwarding calls (Figs. 1, 6A; Abstract; col. 7, ll. 50-61).
8. Bartle, like Holloway, describes two possible options for call forwarding systems for wireless communications devices, (i) using a wireless beacon (col. 1, ll. 38-49), and (ii) using a docking station (col. 2, ll. 13-28 and 40-46).

PRINCIPLES OF LAW

Claim Construction

“During examination, ‘claims ... are to be given their broadest reasonable interpretation consistent with the specification, and ... claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art.’” *In re Am. Acad. of Sci. Tech. Cir.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004); *In re Morris*, 127 F.3d 1048, 1053-54 (Fed. Cir. 1997).

Anticipation

Anticipation is established when a single prior art reference discloses, expressly or under the principles of inherency, each and every limitation of the claimed invention. *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1347 (Fed. Cir. 1999); *In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994).

Obviousness

Appellant has the burden, when on appeal to the Board, to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006). The Examiner bears the initial burden of presenting a prima facie case of obviousness, and Appellant has the burden of presenting a rebuttal to the prima facie case. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

“‘A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.’” *Ricoh Co., Ltd. v. Quanta Computer, Inc.*, 550 F.3d 1325, 1332 (Fed. Cir. 2008) (quoting *Kahn*, 441 F.3d at 990). A reference does not teach away if it merely expresses a general preference for an alternative invention from amongst options available to the ordinarily skilled artisan, and the reference does not discredit or discourage investigation into the invention claimed. *In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004).

ANALYSIS

First Issue: Holloway

Appellant's arguments (App. Br. 6-8; Reply Br. 2-3) that Holloway fails to disclose or suggest the limitation recited in claim 36 of (i) selecting an alternate network destination address corresponding to a unique identification, and (ii) forwarding external communications to the alternate network destination address when (a) a wireless mobile device is within a wireless beacon coverage area, and (b) the unique identification is an expected value, are unconvincing in light of our findings with respect to Holloway (FF 4, 5). Appellant's contention (App. Br. 8) that Holloway's disclosure (§ [0021]) of selecting to override the transfer of calls with a button is not the same as selecting an alternate network destination address when a unique identification is an expected value is also unconvincing.

Broadly interpreted, claim 36 only requires a wireless mobile device that "selects an alternate network destination address" (claim 36). *See Am. Acad. of Sci. Tech. Cir.*, 367 F.3d at 1364. The phrase "selects" broadly encompasses Holloway's selection of a call forwarding destination 130/240 for forwarding calls normally sent to the wireless mobile device 110 (*see* FF 4). Holloway discloses recognizing plural mobile phones with one transmitter and then transferring each of those mobile phones' calls to different call forwarding numbers (FF 4). Thus, Holloway *selects* an alternate network address (i.e., number or location of alternate phone to receive the call) in order to transfer the call. We agree with the Examiner (Ans. 3-4) that Holloway selects an alternate address when the button disclosed in paragraph [0021] is not depressed (i.e., call forwarding is

selected as *not* being canceled, therefore call forwarding is *selected* and calls are forwarded to the alternate address).

We also agree with the Examiner (Ans. 24-25) that in Holloway (i) the identification must be unique to the phone and transmitter otherwise every wireless phone in the area would respond to the transmitter, and (ii) a unique identification must be an expected value (i.e., the number must correspond to the location of the phone to receive forwarded calls). Holloway also discloses forwarding external communications to the alternate network destination address 130 when wireless mobile device 110 is within a wireless beacon coverage area 120 (Figs. 1A, 1B; ¶¶ [0014], [0015]; FF 4, 5).

Thus, we find no error in the Examiner's reliance on Holloway as teaching or suggesting selecting an alternate network destination address corresponding to a unique identification (*see* Ans. 3-4, 23-25; FF 4), at least to the extent this feature is broadly recited in claim 36. *See Am. Acad. of Sci. Tech. Cir., supra*. Appellant has not shown that the Examiner erred in determining that Holloway discloses or suggests (i) selecting an alternate network destination address corresponding to a unique identification, and (ii) forwarding external communications to the alternate network destination address when (a) the wireless mobile device is within a wireless beacon coverage area, and (b) the unique identification is an expected value (*see* FF 4, 5).

Accordingly, we will sustain the Examiner's anticipation rejection of claim 36.

Second Issue: Teaching Away

With regard to the obviousness rejections of claims 1, 3, 4, 7 to 13, 15, 18 to 27, 32 to 35, 37 to 45, the Examiner relies on Holloway as teaching all of the salient limitations except for a look up table accessible to a wireless device, and relies on Bartle (col. 7, ll. 50-61) as teaching the recited limitation of a table or look up table (LUT) of recognized unique identifiers which is accessible to a wireless device, as set forth in claims 1, 3, 13, 27, 32 and 45 (Ans. 6-7, 9, 11, 12). Appellant's arguments that Holloway and Bartle teach away from their combination are unpersuasive for the reasons that follow.

Holloway and Bartle each disclose two possible options for call forwarding systems for wireless communications devices, (i) using a wireless beacon, and (ii) using a docking station (*see* FF 6, 8). Holloway and Bartle do not teach away since they merely express a general preference for an alternative invention (i.e., either using a wireless beacon or a docking station) from amongst options available to the ordinarily skilled artisan, and the references do not discredit or discourage investigation into the invention claimed. *Fulton*, 391 F.3d at 1201.

A person of ordinary skill, upon reading either Holloway or Bartle, would not be discouraged from following either path set out in the references (i.e., performing call forwarding by using a wireless beacon vs. a docking station), or would not be led in a direction divergent from the path that was taken by Appellant. *Ricoh Co., Ltd. v. Quanta Computer, Inc.*, 550 F.3d at 1332. Notably, Appellant's Specification is silent with respect to using a docking station for call forwarding, and states that the invention is related simply to "call forwarding requests for wireless communications"

(Spec. ¶ [0001]). Appellant's invention, Holloway, and Bartle are all related to methods and systems for performing call forwarding requests for wireless communications (*see* FF 1, 4, 6-8). One of ordinary skill in the art of wireless call forwarding methods and systems would seek a better way to forward calls to recognized identifiers (i.e., forwarding numbers). Such an ordinarily skilled artisan looking at the known wireless communication call forwarding process would have been motivated to follow Bartle's disclosure of accessing a call forwarding memory or LUT to look up the preferred (i.e., call forwarding) number (*see* FF 7). This would produce the result sought by the Appellant of automatically processing the call forwarding request.

Appellant's argument (App. Br. 12-14; Reply Br. 3-4) that Holloway teaches away from using a docking station for call forwarding phones, while Bartle discloses using a docking station and teaches away from using specialized hardware such as wireless beacons for call forwarding, is unconvincing in light of our findings with respect to Holloway (FF 6) and Bartle (FF 8).

In summary, Appellant's arguments throughout the briefs do not convince us that Holloway or Bartle teach away from either the claimed invention or each other. Appellant has not shown that the Examiner erred in determining that Holloway and Bartle are properly combinable.

Turning next to what the proper combination of Holloway and Bartle teaches or suggests to one of ordinary skill in the art, we note the Examiner relies on Bartle (col. 7, ll. 50-61) as teaching the recited limitation of a table or look up table (LUT) of recognized unique identifiers which is accessible to a wireless device, as set forth in claims 1, 3, 13, 27, and 32 (Ans. 6-7, 9, 11, 12). In other words, the Examiner only relies upon Bartle for a teaching

of a LUT used for call forwarding, and does not rely on the details of the docking station or associated hardware. In addition, Bartle discloses that two options exist for call forwarding, using a docking station or a wireless beacon (FF 8). Holloway also discloses these same two options (FF 6).

One of ordinary skill in the art would understand that a LUT for looking up call forwarding numbers is beneficial in either environment. Accordingly, Appellant's arguments drawn to the specifics of Bartle's docking station are not commensurate in scope with the Examiner's limited reliance upon just the LUT teachings of the reference.

We concur with the Examiner's findings and conclusions regarding the obviousness rejections based on Holloway and Bartle (Ans. 5-22) and adopt them as our own, with some amplification as to the teachings of Holloway (FF 4-6; discussion of Holloway's teachings relating to the anticipation rejection of claim 36 *supra*) and Bartle (FF 7, 8).

Claims 1, 13, 15, 18 to 26, 32 to 35, and 38 to 44

The properly combined teachings of the references (limiting Bartle to just a LUT for storing numbers, and not for determining whether or not a wireless beacon or source is recognized) do not teach or suggest the limitations of (i) independent claims 1 and 13 which require the LUT to determine whether a wireless beacon or source is recognized, or (ii) independent claim 32 which requires a table of address associated with recognized wireless beacon identifiers. Thus, we agree with the Appellant's argument that the skilled artisan would not have combined the teachings of Bartle with those of Holloway to arrive at the invention recited in claims 1, 13, and 32.

Accordingly, we will not sustain the obviousness rejections of independent claims 1, 13, and 32 because the Examiner's articulated reasons for combining the teachings of the references to Holloway and Bartle do not support a legal conclusion of obviousness. *KSR Int'l., v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). For similar reasons, we will also not sustain the obviousness rejections of dependent claims 15, 18 to 26, 33 to 35, 38 to 43, which ultimately depend from respective rejections of claims 1, 13, and 32.

Claims 3, 4, 7 to 12, 27, and 45

The properly combined teachings of Holloway and Bartle however, *do* teach or suggest the salient limitations of independent claims 3 and 27, as well as dependent claim 45 (*see* FF 4, 5, 7). Because (i) Appellant presents arguments to claims 3, 27, and 45 (App. Br. 10, 12, 19) regarding Holloway similar to the arguments of claim 36, (ii) claims 4 and 7 to 13 ultimately depend from claim 3, and claim 45 depends from claim 36, (iii) claims 3 and 27 contain similarities to claim 36, and (iv) for similar reasons discussed with respect to claim 36 regarding the teachings of Holloway, we will also sustain the Examiner's obviousness rejection of claims 3, 27, and 45.

Claims 3 differs from claims 1, 13, and 32 *supra*, in that claim 3 merely recites a LUT for selecting a destination telephone, whereas, claims 1, 13, and 32 recite using the LUT to determine whether the wireless beacon or source is "recognized" (*see* claims 1, 13, and 32). Claim 27 does not recite a table or LUT. Claim 45 depends from claim 36, *supra*, and recites a look up table of recognized unique identifiers (claim 45).

With respect to claims 3, 4, and 7 to 12, Appellant's argument (App. Br. 11) that Bartle does not disclose or suggest determining whether the

wireless beacon is “recognized” is unpersuasive inasmuch as the Examiner relies upon Holloway as teaching this feature, and not Bartle (*see* Ans. 6-7).

With respect to claim 27, Appellant’s arguments (App. Br. 18-20) that Holloway, Bartle, and Mori fail to disclose or suggest at least one element of claim 27, do not convince us of any error in the Examiner’s *prima facie* case. Appellant’s argument, (App. Br. 19) that Holloway uses first and second signals to forward calls, recognizes a transmitter identifier, and determines a network address (as opposed to one signal or request), is unpersuasive, and is not commensurate in scope with the invention set forth in claim 27. Claim 27 is silent as to whether or not one or two signals, or any “signal,” *per se*, is required to perform the function of the first control module. Therefore claim 27 broadly encompasses the Holloway system as modified by Bartle, and Mori’s teaching of using two control modules. Appellant’s argument (App. Br. 19) that Bartle fails to disclose or suggest providing a call forwarding request is unpersuasive. The Examiner only relies upon Bartle for teaching a LUT, and not the specifics of recognizing a beacon/transmitter or determining a network address destination based on the recognized transmitter identifier (Ans. 20-21). Appellant does not address Mori other than to state that Mori fails to cure the deficiencies of Holloway and Bartle (App. Br. 19).

With respect to claim 45, Appellant’s argument (App. Br. 12) that Bartle’s binary number received from the charging unit does not disclose or suggest a unique identification, is unpersuasive because (i) the Examiner has not relied on Bartle’s binary numbers as the unique identifiers, and (ii) Bartle does disclose a look up table including call forward numbers which constitute unique identifiers (FF 7).

Appellant has not overcome the Examiner's prima facie case of obviousness with respect to claims 3 (*see* Ans. 6-7, 26-27), 27 (*see* Ans. 20-21, 30-32), and 45 (*see* Ans. 11). Accordingly, we will sustain the obviousness rejections of claims 27 and 45, as well as the obviousness rejection of claims 4 and 7 to 12 which ultimately depend from claim 3.

Third Issue: APA and Rejection of Claim 44

Appellant's argument (App. Br. 22; Reply Br. 9) that APA fails to disclose or suggest the recited limitation of dependent claim 44 because running an automated activation procedure to provision a beacon identifier and public key to a phone is not a unique and user selected identification, is convincing. The Examiner has failed to rebut, or even address, Appellant's argument regarding the teachings of APA with regard to claim 44 (*see* Appellant's arguments, App. Br. 22; and the Examiner's response, Ans. 32).

Appellant has successfully rebutted the Examiner's prima facie case of obviousness with respect to claim 44 by demonstrating that APA's (paragraph [0024]) activation procedure and the recited "user selected identification" (claim 44) are different. *Oetiker*, 977 F.2d at 1445. Because all of the limitations of claim 44 are not found in the teachings of Holloway and APA, we will not sustain the Examiner's obviousness rejection of claim 44 (*see* FF 3).

Claim 37

The Examiner rejected claim 37 under 35 U.S.C. § 103(a) based upon the teachings of Holloway and Chow, relying on Chow as teaching that the unique identification can be represented by a color code (Ans. 19-20). Appellant relies on the argument with respect to claim 36 for the patentability of claim 37, and also asserts that Chow fails to cure the

deficiencies of Holloway (App. Br. 18). Accordingly, we will sustain the obviousness rejection of claim 37 over Holloway and Chow for the reasons discussed *supra* with regard to the teachings of Holloway, and because Appellant has failed to rebut the Examiner's prima facie case of obviousness.

CONCLUSIONS OF LAW

Appellant has not shown that the Examiner erred in determining that Holloway discloses or suggests (i) selecting an alternate network destination address corresponding to a unique identification, and (ii) forwarding external communications to the alternate network destination address when (a) a wireless mobile device is within a wireless beacon coverage area, and (b) the unique identification is an expected value.

Appellant has not shown that the Examiner erred in determining that Holloway and Bartle are properly combinable. The properly combined teachings of the references (limiting Bartle to just an LUT) do not teach or suggest the limitations of (i) independent claims 1 and 13 which require the LUT to determine whether a wireless beacon or source is recognized, or (ii) independent claim 32 which requires a table of address associated with recognized wireless beacon identifiers. The properly combined teachings of Holloway and Bartle do, however, teach or suggest the salient limitations of claims 3, 27, and 45.

Based on the Examiner's failure to address Appellant's arguments, Appellant has shown that the Examiner erred in determining that APA (Spec. ¶ [0026]) discloses or suggests a unique and user selected identification as recited in claim 44.

We conclude that Appellant has adequately shown the Examiner erred in rejecting claims 1, 13, 15, 18 to 26, 32 to 35, and 38 to 44 under 35 U.S.C. § 103(a). Appellant has not shown the Examiner erred in rejecting claim 36 under 35 U.S.C. § 102(b), and in rejecting claims 3, 4, 7 to 12, 27, 37, and 45 under 35 U.S.C. § 103(a).

ORDER

The decision of the Examiner rejecting claims 3, 4, 7 to 12, 27, and 36, 37, and 45 is affirmed. The decision of the Examiner rejecting claims 1, 13, 15, 18 to 26, 32 to 35, and 38 to 44 is reversed. Accordingly, the decision of the Examiner is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

gvw

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